



Ottawa, May 31, 2006

MEMORANDUM D2-5-11

In Brief

ADMINISTRATIVE AND OPERATIONAL GUIDELINES FOR COMMERCIAL CARRIERS FOR THE PROCESSING OF PASSENGER INFORMATION PURSUANT TO THE REQUIREMENTS OF THE CANADA BORDER SERVICES AGENCY'S (CBSA) ADVANCE PASSENGER INFORMATION/PASSENGER NAME RECORD (API/PNR) PROGRAM

This Memorandum provides administrative and operational guidelines and compliance requirements for commercial carriers for the processing of API/PNR data for passengers being conveyed into Canada.

Revisions made to this Memorandum are the result of a French language review and changes to the CBSA Web site.



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PASSENGER INFORMATION/PASSENGER NAME
RECORD (API/PNR) PROGRAM**

This Memorandum provides administrative and operational guidelines and compliance requirements for commercial carriers for the processing of API/PNR data for passengers being conveyed into Canada.

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LEGISLATION

Section 107.1 of the *Customs Act*

107.1(1) Passenger Information – The Minister may, under prescribed circumstances and conditions, require any prescribed person or prescribed class of persons to provide, or provide access to, prescribed information about any person on board a conveyance in advance of the arrival of the conveyance in Canada or within a reasonable time after that arrival.

107.1(2) Disclosure – Any person who is required under subsection (1) to provide, or provide access to, prescribed information shall do so despite any restriction under the *Aeronautics Act* on the disclosure of such information.

STATUTORY INSTRUMENT

Passenger Information (Customs) Regulations

Interpretation

1. The following definitions apply in these Regulations:

“commercial carrier” means the owner or operator of a commercial conveyance. (*transporteur commercial*)

“commercial conveyance” means any conveyance that is used for the commercial transportation of persons or goods by air, water or land. (*moyen de transport commercial*)

“Minister’s representative” means a person authorized by the Minister to obtain information referred to in section 3. (*représentant du ministre*)

“reservation system” means any system, whether electronic or manual, that contains information relating to persons on board a commercial conveyance. (*système de réservation*)

Prescribed classes of persons

2. The following are the prescribed classes of persons for the purposes of section 107.1 of the *Customs Act*:

- (a) commercial carriers and charterers who undertake to carry persons or goods to Canada and the representatives of those carriers and charterers;
- (b) travel agents; and,
- (c) owners and operators of a reservation system.

Prescribed information

3. The following is, for the purposes of section 107.1 of the Act, the prescribed information in respect of a person on board a commercial conveyance:

- (a) their surname, first name and any middle names;
- (b) their date of birth;
- (c) their gender;
- (d) their citizenship or nationality;
- (e) the type of travel document that identifies them, the name of the country in which the travel document was issued and the number on the travel document;
- (f) their reservation record locator number, if any, and, in the case of a person in charge of the commercial conveyance or any other crew member without a

reservation record locator number, notification of their status as a crew member; and,

(g) the information relating to the person in a reservation system.

Prescribed condition – manifest

4.(1) If the Minister requires a member of a prescribed class to provide prescribed information referred to in paragraphs 3(a) to (f), it is a prescribed condition that the member provide the information in the form of a manifest to a Minister's representative at the time of the departure of the commercial conveyance from the last place that person boarded the conveyance before arriving in Canada.

Prescribed condition – reservation system

4.(2) If the Minister requires a member of a prescribed class to provide, or provide access to, prescribed information referred to in paragraph 3(g), it is a prescribed condition that the member provide the information to a Minister's representative or provide a Minister's representative with access to the member's reservation system, as the case may be.

Prescribed condition – electronic or non-electronic format

4.(3) If the Minister requires a member of a prescribed class to provide, or provide access to, prescribed information referred to in section 3, it is a prescribed condition:

(a) when the member maintains the information in an electronic format, that the member provide, or provide access to, as the case may be, the information in the electronic format; and,

(b) when the member does not maintain the information in an electronic format, that the member provide copies of the information or provide access to the written information, as the case may be.

Coming into force

5. These Regulations are deemed to have come into force on October 4, 2002.

GUIDELINES AND GENERAL INFORMATION

OVERVIEW

1. Section 107.1 of the *Customs Act* requires all commercial carriers, charterers and/or their agents, travel agents, and owners and operators of a reservation system to provide specific information to the Canada Border Services Agency (CBSA) for all persons on board a commercial

conveyance prior to its arrival in Canada from foreign points of origin. Failure to provide Advance Passenger Information/Passenger Name Record (API/PNR) data for all persons on board (crew members and passengers), or data that is not in an approved format that prevents receipt and processing by the CBSA for its intended purpose, contravenes section 107.1 of the Act and may result in the assessment of a penalty. Commercial carriers should note that providing API/PNR data does not replace the requirement to stop at designated CBSA locations upon arrival in Canada and report all persons/goods on board their conveyance in the appropriate manner.

2. As outlined in paragraph three of the *Passenger Information (Customs) Regulations*, API data includes the following: surname, first name and any middle names; date of birth; gender; citizenship or nationality; the travel document type that identifies them and the number and the name of the country of issue; and, as applicable, the reservation record locator number or crew member status.

3. The *Passenger Information (Customs) Regulations* specify PNR as information relating to a person in a reservation system. The CBSA will only be provided with the data elements required to achieve its mandate.

4. API/PNR data is used by the CBSA to identify persons who may be involved with, or who are at risk to import goods related to terrorism or terrorism-related crimes, or other serious crimes that are transnational in nature. Such persons identified through a risk-assessment process may be subject to closer questioning upon their arrival in Canada.

5. Under the Act, commercial carriers are not required to inform passengers about the provision of API/PNR data or to obtain their consent. However, commercial carriers may be legally obligated by privacy legislation in force where the PNR is provided to notify passengers that PNR data is being supplied to the CBSA under the requirements of the CBSA's API/PNR program. Commercial carriers should consult with the relevant data protection authorities for further direction regarding the matter of passenger notification. A notification has been posted for the public on the CBSA Web site called Information Notice for Persons Travelling to Canada by Commercial Carrier.

6. Commercial carriers who are planning to start passenger service to Canada should contact the CBSA at least three months in advance of the anticipated start date of service to establish an action plan for the development and implementation of a technical solution to process passenger information for the API/PNR program.

7. Commercial carriers should be aware that the passenger data they process under the API/PNR program may be subject to privacy laws of other countries. Commercial carriers should investigate the privacy legislation and confer with the privacy authorities of the countries where the passenger information that is to be provided to the CBSA

originates or is stored to ensure they meet any applicable conditions. Commercial carriers should note that the privacy legislation in force in some jurisdictions might dictate certain requirements and specifications regarding the configuration of the technical solution as well as the parameters by which API/PNR data is to be processed.

8. CBSA officials liaise with commercial carriers and charterers and provide guidance and technical assistance to ensure each carrier is compliant with the API/PNR program. Commercial carriers may contact a CBSA official by telephone at **1-866-4API-PNR (1-866-427-4767)** toll-free in North America) or by e-mail at API-PNR@cbsa-asfc.gc.ca.

9. For further information about the API/PNR program, please contact the CBSA by e-mail at API-IPV@cbsa-asfc.gc.ca. For all other customs enquiries, please visit the CBSA Web site at www.cbsa.gc.ca or telephone **1-800-461-9999**.

PROVISION OF API/PNR DATA

10. **Electronic format** – The *Passenger Information (Customs) Regulations* require that where passenger information is maintained in an electronic format, the commercial carrier must provide, or provide access to, the information in the electronic format. The electronic transmission of API/PNR data must take place when the commercial conveyance departs from its last foreign point of origin en route to Canada.

11. **Passenger data requirements** – The electronic transmission of API/PNR data alone does not fulfil the statutory requirement placed on commercial carriers to provide or to provide access to passenger information. To be fully compliant, commercial carriers must provide or provide access to API/PNR data to the CBSA in an approved manner; that is, it must be provided prior to the conveyance's arrival in Canada and the information must be in a readable, useable and approved format. Failure to provide the data accordingly constitutes non-compliance and may result in an Administrative Monetary Penalty (AMP).

12. **Processing API/PNR data** – To ensure that API/PNR data is processed properly, it must be transmitted to the CBSA in an approved message format, as outlined in the CBSA's *API/PNR Program Reference Guide for Commercial Carriers*. This guide is available by contacting the CBSA at **1-866-4API-PNR (1-866-427-4767)** toll-free in North America) or by e-mail at API-PNR@cbsa-asfc.gc.ca.

13. **Commercial carrier system changes** – The CBSA must be notified of any system changes that could affect the processing of API/PNR data. In the event changes are made to a commercial carrier's reservation system that may impede the processing of API/PNR data, the carrier must contact the CBSA immediately.

COMPLIANCE MANAGEMENT

Penalties for failing to provide or failing to provide access to API/PNR data

14. The CBSA may assess an AMP if a commercial carrier does not comply with section 107.1 of the Act.

15. An AMP may be assessed for non-compliance if the commercial carrier does not provide the API data for all crew members and passengers prior to the arrival of the commercial conveyance in Canada, or within a reasonable time (reasonable time is considered by the CBSA to be within 15 minutes) after that arrival. The penalty amount has been established at CAN\$3,000 and may be issued under the following conditions:

- (a) no API data is provided; or
- (b) API data is not provided for all crew members and/or passengers.

16. An AMP may be assessed for non-compliance if the commercial carrier does not provide the PNR data, and provide it in a format that can be successfully processed by the CBSA, for all passengers prior to the arrival of the commercial conveyance in Canada, or within a reasonable time (reasonable time is considered by the CBSA to be within 15 minutes) after that arrival. The penalty amount has been established at CAN\$3,000 and may be issued under the following conditions:

- (a) no PNR data is provided; or
- (b) PNR data is not provided for all passengers.

17. If both the required API and PNR data are not provided, an AMP in the amount of CAN\$3,000 may be assessed on a per flight basis.

18. If the CBSA is notified immediately, no penalty is normally applied if the API/PNR data is not available due to the failure of a commercial carrier's or charterer's equipment or systems. However, this situation will not apply if the outages are frequent and are due to the commercial carrier's continued failure to exercise due diligence in processing API/PNR data. In addition, a system outage does not relieve the commercial carrier's responsibility to provide the API/PNR information. Refer to the *API/PNR Reference Guide for Commercial Carriers* for system outage procedures.

19. The Compliance Management Framework for the CBSA's API/PNR program is administered by the Risk Assessment Systems Division of the Innovation, Science and Technology Branch. Commercial carriers should refer to this Branch if they have any compliance concerns. Contact information is listed in section 8 (above).

20. To ensure ongoing compliance and to avoid the possible assessment of penalty, commercial carriers should carry out periodic verifications of their systems, internal processes and standard operating procedures that are involved in the processing of API/PNR data for crew members and passengers on board conveyances destined to Canada. This is especially important in situations where system changes have taken place or where there have been changes in personnel or third-party contractors who are involved in the processing of API/PNR data.

21. For further information regarding the CBSA's Administrative Monetary Penalty System, consult Memorandum D22-1-1.

DATA PRIVACY PROTECTION

CBSA privacy measures to protect API/PNR data

22. All API/PNR data provided to the CBSA under section 107.1 of the Act is classified as customs information. Accordingly, access, use and disclosure of API/PNR data is governed by section 107 of the Act, as well as the *Privacy Act* and the *Access to Information Act*.

23. All API/PNR data storage and access is strictly controlled and monitored by the CBSA.

24. Use and access to API/PNR data by authorized CBSA officials is done so in accordance with the former Canada Customs and Revenue Agency's *Electronic Networks Policy*.

25. Administrative guidelines for the use, retention and access to API/PNR data are outlined in Memorandum D1-16-2, *Interim Administrative Guidelines for the Provision to Others, Allowing Access to Others and Use of Customs Information*.

REFERENCES

<p>ISSUING OFFICE –</p> <p>Risk Assessment Systems Division Major Project Design and Development Directorate Innovation, Science and Technology Branch</p>	<p>HEADQUARTERS FILE –</p> <p>N/A</p>
<p>LEGISLATIVE REFERENCES –</p> <p><i>Customs Act</i>, section 107.1, paragraphs (1) and (2)</p>	<p>OTHER REFERENCES –</p> <p>D1-16-1, <i>Explanation of Section 107 of the Customs Act</i> D1-16-2, <i>Interim Administrative Guidelines for the Provision to Others, Allowing Access to Others, and Use of Customs Information</i> D22-1-1, <i>Administrative Monetary Penalty System</i></p>
<p>SUPERSEDED MEMORANDA “D” –</p> <p>D2-5-11, October 6, 2005</p>	

Services provided by the Canada Border Services Agency are available in both official languages.

